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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2016–0102; FXES11130900000 167 FF09E42000]

RIN 1018–BB74

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Oregon Silverspot Butterfly in Northwestern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), with the support of the State of Oregon Parks and Recreation Department (OPRD), propose to establish a nonessential experimental population (NEP) of the Oregon silverspot butterfly (*Speyeria zerene hippolyta*), a threatened species, under the authority of section 10(j) of the Endangered Species Act of 1973, as amended (Act). This proposed rule provides a plan for reintroducing the Oregon silverspot butterfly into portions of the subspecies' historical range at two sites in northwestern Oregon: Saddle Mountain State Natural Area (SNA) in Clatsop County, and Nestucca Bay National Wildlife Refuge (NWR) in Tillamook County. It would also provide for allowable legal incidental taking of the Oregon silverspot butterfly within the defined NEP areas. The best available data indicate that reintroduction of the Oregon silverspot butterfly to Saddle Mountain SNA

and Nestucca Bay NWR is biologically feasible and would promote the conservation of the subspecies.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

- Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter Docket No. FWS–R1–ES–2016–0102, which is the docket number for this rulemaking. Then, click the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Proposed Rules to locate this document. You may submit a comment by clicking on “Comment Now!”

- By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2016–0102, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service, MS; BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *<http://www.regulations.gov>*. This generally means

that we will post any personal information you provide us (see **Public Comments**, below, for more information).

Copies of documents: This proposed rule is available on <http://www.regulations.gov> under Docket No. FWS–R1–ES–2016–0102. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Newport Field Office, 2127 SE Marine Science Drive, Newport, OR 97365; telephone 541–867–4558. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Laura Todd, Field Supervisor, 541–867–4558. Persons who use a TDD may call the Federal Relay Service (FRS) at 1–800–877–8339. Direct all questions or requests for additional information to: OREGON SILVERSPOT BUTTERFLY QUESTIONS, U.S. Fish and Wildlife Service, Newport Field Office, 2127 SE Marine Science Drive, Newport, OR 97365.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into

consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>. All comments and materials we receive, as well as all supporting documentation, will be available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Newport Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We particularly seek comments regarding:

- Any possible adverse effects on Oregon silverspot butterfly populations as a

result of removal of individuals for the purposes of captive rearing and reintroduction of their offspring elsewhere;

- The likelihood that the proposed NEP will become established and survive in the foreseeable future;
- The relative effects that establishment of the NEP will have on the recovery of the subspecies; and
- The extent to which the reintroduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the proposed NEP areas.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and a recent internal memorandum clarifying the Service's interpretation and implementation of that policy (USFWS 2016), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

We listed the Oregon silverspot butterfly as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) on October 15, 1980 (45 FR 44935; July 2, 1980). We designated critical habitat for the subspecies at the time of listing (45 FR 44935; July 2, 1980).

Species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 of the Act and the requirements of section 7 of the Act. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Our regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife species. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as “experimental populations.” The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations would negatively impact landowners

and other private parties, by giving the Secretary greater regulatory flexibility and discretion in managing the reintroduction of listed species to encourage recovery in collaboration with partners, especially private landowners. Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population an endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed).

As discussed below (see **Relationship of the NEP to Recovery Efforts**), we are considering the reintroduction of the Oregon silverspot butterfly into areas of suitable habitat within its historical range for the purpose of restoring populations to meet recovery goals. Oregon silverspot butterfly populations have been reduced from at least 20 formerly known locations to only 5, thus reintroductions are important to achieve biological redundancy in populations and to broaden the distribution of populations within the geographic range of the subspecies. The restoration of multiple populations of Oregon silverspot butterfly distributed across its range is one of the recovery criteria identified for the subspecies (USFWS 2001, pp. 39–41).

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential or nonessential to the continued existence of the species. This determination is based solely on the best scientific and commercial data available. Our regulations (50 CFR 17.80(b)) state that an experimental

population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We find the proposed experimental population to be nonessential for the following reasons: (1) Oregon silverspot butterflies are currently found at five locations, from the central Oregon coast to northern California (see **Biological Information**, below); (2) There are ongoing management efforts, including captive rearing and release, to maintain or expand Oregon silverspot butterfly populations at these five locations (VanBuskirk 2010, entire; USFWS 2012, entire); (3) The experimental population will not provide demographic support to the wild populations (see **Location and Boundaries of the NEP**, below); (4) The experimental population will not possess any unique genetic or adaptive traits that differ from those in the wild populations because it will be established using donor stock from extant wild populations of Oregon silverspot butterflies (see **Donor Stock Assessment and Effects on Donor Populations**, below); and (5) loss of the experimental population will not preclude other recovery options, including future efforts to reestablish Oregon silverspot butterfly populations elsewhere. Therefore, we are proposing to designate a nonessential experimental population (NEP) of Oregon silverspot butterfly at two sites in northwest Oregon.

With the NEP designation, the relevant population is treated as if it were listed as a threatened species for the purposes of establishing protective regulations, regardless of the species' designation elsewhere in its range. This approach allows us to develop tailored take prohibitions that are necessary and advisable to provide for the conservation of the species. In these situations, the general regulations that extend most section 9

prohibitions to threatened species do not apply to that species. The protective regulations adopted for an experimental population in a section 10(j) rule contain the applicable prohibitions and exceptions for that population. These section 9 prohibitions and exceptions apply on all lands within the NEP.

For the purposes of section 7 of the Act, which addresses Federal cooperation, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) of the Act requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) of the Act apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional to the agencies carrying out, funding, or authorizing activities. If finalized, the NEP area within Nestucca Bay NWR will still be subject to

the provisions of section 7(a)(2), and intra-agency consultation would be required on the refuge. Section 7(a)(2) consultation would not be required outside of the refuge.

Before authorizing the release as an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider the following factors (see 49 FR 33893; August 27, 1984): (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see **Donor Stock Assessment and Effects on Donor Populations**, below); (2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see **Likelihood of Population Establishment and Survival**, below); (3) the relative effects that establishment of an experimental population will have on the recovery of the species (see **Relationship of the NEP to Recovery Efforts**, below); and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see **Extent to Which the Reintroduced Population May Be Affected by Land Management Within the Proposed NEP**, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed

location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s) (see **Location and Boundaries of the NEP**, below); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see discussion in this section, above); (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see **Extent to Which the Reintroduced Population May Be Affected by Land Management Within the Proposed NEP**, below); and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see **Reintroduction Effectiveness Monitoring and Donor Population Monitoring**, below).

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we

cannot designate critical habitat in areas where we establish an NEP.

Biological Information

The Oregon silverspot butterfly is a small, darkly marked coastal subspecies of the Zerene fritillary, a widespread butterfly species in montane western North America (USFWS 2001, p. 1). Historically, the Oregon silverspot butterfly was documented at 20 locations, from the border of northern California to the southern coast of Washington (McCorkle *et al.* 1980, p. 7). Its current distribution is limited to five locations, one near Lake Earl, along the coast of Del Norte County, California; two on the central Oregon coast in Lane County, Oregon; and two in Tillamook County, Oregon. With the exception of the two populations on the central Oregon coast that are only about 5 miles (mi) (8 kilometers (km)) apart, all remaining populations are geographically isolated from one another (USFWS 2001, pp. 8–10).

The Oregon silverspot butterfly has a 1-year life cycle which begins when female adults lay eggs on or near early blue violets (*Viola adunca*) during their flight period from mid-August through September. The eggs hatch within 10 days. The tiny first-instar caterpillars eat their eggshells and then go into diapause, a hibernation-like state, until late spring the following year when violets begin growing. Caterpillars are cryptic in habits and feed on early blue violets and a few other *Viola* species until pupation in the summer. Adult emergence starts in July and extends into September.

The Oregon silverspot butterfly occupies three types of grassland habitat: marine terrace and coastal headland meadows, stabilized dunes, and montane grasslands. Key resources needed by the Oregon silverspot butterfly in all of these habitats include: (1)

The early blue violet, which is the primary host plant for Oregon silverspot caterpillars; (2) a variety of nectar plants that bloom during the butterfly flight period, including, but not limited to, yarrow (*Achillea millefolium*), pearly everlasting (*Anaphalis margaritacea*), Pacific aster (*Symphyotrichum chilense*), Canada goldenrod (*Solidago canadensis*), tansy ragwort (*Senecio jacobaea*), and edible thistle (*Cirsium edule*); (3) grasses and forbs in which the larvae find shelter; and (4) trees surrounding occupied meadows, which provide shelter for adult butterflies (45 FR 44935, July 2, 1980, p. 44939; USFWS 2001, p. 12). Historically, habitats with these key resources were likely widely distributed along the Oregon and Washington coasts (Hammond and McCorkle 1983, p. 222). Loss of habitat and key resources occurred as a result of human development and due to ecological succession and invasion of shrubs, trees, and tall introduced grasses which crowd-out the subspecies' host plants and nectar resources (Hammond and McCorkle 1983, p. 222). Loss of habitat was the primary threat to the subspecies identified in our 2001 Revised Recovery Plan for the Oregon Silverspot Butterfly (USFWS 2001, entire). More recently, during a periodic review of the subspecies' status, we identified the reduced size, number, and isolation of Oregon silverspot butterfly populations as additional severe and imminent threats to the subspecies (USFWS 2012, pp. 24–25).

Additional information on the biology, habitat, and life history of the butterfly can be found in our Revised Recovery Plan for the Oregon Silverspot Butterfly (*Speyeria zerene hippolyta*) (USFWS 2001, pp. 11–19), which is available online at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2016–0102 or by contacting

the person listed under **FOR FURTHER INFORMATION CONTACT**, above.

Relationship of the NEP to Recovery Efforts

We are proposing to establish an NEP to promote the conservation and recovery of the Oregon silverspot butterfly. The recovery strategy for the Oregon silverspot butterfly, as detailed in our 2001 revised recovery plan, is to protect and manage habitat, and to augment and restore populations (USFWS 2001, pp. 39–41). Recovery criteria for the Oregon silverspot butterfly are (USFWS 2001, p. 42):

1. At least two viable Oregon silverspot butterfly populations exist in protected habitat in each of the following areas: Coastal Mountains, Cascade Head, and Central coast in Oregon; and Del Norte County in California; and at least one viable Oregon silverspot butterfly population exists in protected habitat in each of the following areas: Long Beach Peninsula, Washington, and Clatsop Plains, Oregon. This includes the development of comprehensive management plans.
2. Habitats are managed long term to maintain native, early successional grassland communities. Habitat management maintains and enhances early blue violet abundance, provides a minimum of five native nectar species dispersed abundantly throughout the habitat and flowering throughout the entire flight-period, and reduces the abundance of invasive, nonnative plant species.
3. Managed habitat at each population site supports a minimum viable population of 200 to 500 butterflies for at least 10 years.

The reintroduction of Oregon silverspot butterflies within the proposed NEP would help address the limited number of populations and the subspecies' diminished

geographic range. In addition, it is likely to contribute to meeting recovery criteria, as both proposed NEP areas have the biological attributes to support a viable butterfly population of butterflies and will be managed consistent with the subspecies' biological needs.

Location and Boundaries of the NEP

Section 10(j) of the Act requires that an experimental population be geographically separate from other populations of the same species. We identified the boundary of the proposed NEP as those Public Land Survey System sections intersecting with a 4.25-mi (6.8-km) radius around the proposed release locations. This boundary was selected to encompass all likely movements of Oregon silverspot butterflies away from the release areas while maintaining geographic separation from existing populations. This 4.25-mi (6.8-km) radius is greater than the longest known flight distance of the Oregon silverspot butterfly (4.1 mi (6.6 km)) (VanBuskirk and Pickering 1999, pp. 3–4, Appendix 1). Although this flight distance had previously been reported as “5 miles” (VanBuskirk and Pickering 1999, p. 4; USFWS 2010, p. 10), a more precise measurement using the locations where the individual butterfly in question was marked and recaptured (rather than the general distance between the populations) resulted in a distance of 4.1 mi (6.8 km). The proposed NEP areas are geographically isolated from existing Oregon silverspot butterfly populations by a sufficient distance to preclude significant contact between populations. There is an extremely small potential that butterflies dispersing 4.1 mi (6.8 km) from the proposed release site on Nestucca Bay NWR may interact with butterflies dispersing 4.1 mi (6.8 km) from Cascade Head,

because these locations are 8 mi (13 km) apart. Nevertheless, the likelihood of butterflies from these two sites interbreeding is remote because of the distance between the sites and the fact that there is little or no suitable habitat with appropriate larval host plants and adult nectar sources between Nestucca Bay NWR and Cascade Head. Even if butterflies dispersed and were present within the same area, we do not believe the occasional presence of a few individual butterflies meets a minimal biological definition of a population. Based on definitions of “population” used in other experimental population rules (e.g., 59 FR 60252, November 22, 1994; 71 FR 42298, July 26, 2006), we believe that a determination that a population is not geographically separate from the proposed NEP area would require the presence of sufficient suitable habitat in the intervening area to support successfully reproducing Oregon silverspot butterflies over multiple years. Because there is little to no suitable habitat between Nestucca Bay NWR and Cascade Head, we conclude this is unlikely to happen. Biologically, the term “population” is not normally applied to dispersing individuals, and any individual butterflies would be considered emigrants from the Cascade Head population. Finally, a few butterflies would not be considered a self-sustaining population. Self-sustaining populations need a sufficient number of individuals to avoid inbreeding depression and occurrences of chance local extinction; a general rule of thumb is that the effective population size needs to be at least 50 to reduce the likelihood of extinction in the short term because of harmful effects of inbreeding depression on demographic rates, and at least 500 to retain sufficient genetic variation to allow for future adaptive change (Jamieson and Allendorf 2014, p. 578).

Saddle Mountain State Natural Area

Saddle Mountain SNA, managed by OPRD, is located in central Clatsop County, in northwest Oregon. Saddle Mountain was historically occupied by the Oregon silverspot butterfly, which was last documented at this site in 1973 (McCorkle *et al.* 1980, p. 8). Butterfly surveys in 1980 and more recent surveys during the butterfly flight period—in 2003, 2006, and 2010—did not document the species at Saddle Mountain (Mike Patterson, pers. comm. 2016), and the population there is presumed to be extirpated (VanBuskirk 2010, p. 27). The nearest extant Oregon silverspot butterfly population is 50 miles (80 km) south at Mount Hebo.

Saddle Mountain SNA is a 3,225-acre (ac) (1,305-hectare (ha)) park known for its unique botanical community, which thrives on the thin rocky soils, with few invasive weeds. Habitat suitable for the Oregon silverspot butterfly consists of approximately 60 ac (24 ha) of meadows on the slopes of Saddle Mountain near its upper peaks at 3,288 feet (ft) (1,002 meters (m)) above sea-level. Based on recent plant surveys (OPRD 2012, p. 2), the proposed release site contains high-quality butterfly habitat with sufficient densities of the requisite species (*Viola adunca* and native nectar plants) to support an Oregon silverspot butterfly population (USFWS 2001, pp. 13–14). Habitat quality has been maintained through natural processes including vertical drainage patterns associated with steep ridges, thin rocky soils, elevation, and winter snow cover within the forb rich Roemer fescue (*Festuca roemerii*) montane grassland community (ONHIC 2004, p. 2). In a letter to the Service dated October 15, 2011, and a follow-up letter dated February 12, 2016, OPRD expressed their desire to have an NEP of Oregon silverspot butterfly and to

return this native pollinator to the ecosystem (OPRD *in litt.*, 2011; OPRD *in litt.*, 2016).

The Saddle Mountain NEP area is centered on the coastal prairie habitat on top of Saddle Mountain, where we are proposing to reintroduce the Oregon silverspot butterfly. The proposed NEP encompasses all the Public Land Survey System sections that intersect with a 4.25-mi (6.8-km) radius around the proposed release area. The subspecies is territorial within habitat areas, and the reintroduced butterflies are expected to stay in or near meadows on top of Saddle Mountain, which have an abundance of the plant species they need to survive. The proposed Saddle Mountain butterfly population will be released into permanently protected suitable habitat. We are proposing to reintroduce the Oregon silverspot butterfly as an NEP in this area to address OPRD's concerns regarding potential impacts to park management activities, such as trail maintenance, and potential opposition from surrounding landowners to the reintroduction of a federally listed species without an NEP. Surrounding land cover is primarily forest (OPRD 2014, pers. comm.) and is not suitable Oregon silverspot butterfly habitat; therefore, we do not expect butterflies to use areas outside of Saddle Mountain SNA.

Nestucca Bay National Wildlife Refuge

The Nestucca Bay NWR, managed by the Service, is located in the southwest corner of Tillamook County, along the northern Oregon coast. Although the Oregon silverspot butterfly was never documented at this site, it is within the historical range of the subspecies along the coast, and a small amount of remnant coastal prairie occurred on the site prior to commencement of restoration efforts in 2011. Therefore, it is reasonable to assume that the Oregon silverspot butterfly once inhabited the area, but no surveys

were conducted to document its presence. Currently occupied Oregon silverspot butterfly sites nearest to the proposed NEP area are 10 mi (16 km) to the east at Mount Hebo and 8 mi (13 km) south at Cascade Head, with little or no suitable habitat in between. There are currently no known extant Oregon silverspot butterfly populations to the north of the proposed release site, but the subspecies was historically documented near Cape Meares, 20 mi (32 km) to the north of Nestucca Bay NWR, where it was last observed in 1968 (McCorkle *et al.* 1980, p. 7).

The Nestucca Bay National Wildlife Refuge Comprehensive Conservation Plan includes a goal to promote the recovery of the Oregon silverspot butterfly by establishing an NEP on the refuge (USFWS 2013, p. 2-4). The approximately 1,203-ac (487-ha) refuge has 25 to 30 ac (10 to 12 ha) of coastal prairie habitat in varying stages of restoration, including the conversion of degraded grasslands on the Cannery Hill Unit from nonnative pasture grasses to native coastal grasses and forbs with an emphasis on the plant species and structure required to support the Oregon silverspot butterfly. Since 2011, invasive weed abundance has been minimized, and thousands of violet and nectar plants have been planted to enhance and restore the coastal prairie ecosystem. Funding acquired by the refuge in 2015 is now being used to complete habitat restoration on the remaining acreage prior to the release of Oregon silverspot butterflies.

The NEP area is centered on coastal prairie habitat on the Cannery Hill Unit of the refuge, where we are proposing to release Oregon silverspot butterflies. The proposed NEP encompasses all Public Land Survey System sections that intersect with a 4.25-mi (6.8-km) radius around the proposed release area. We propose to release Oregon

silverspot butterflies into permanently protected suitable habitat at Nestucca Bay NWR, which will be managed to provide the plant community needed for the butterfly to become established and to support a population. We are proposing to reintroduce the Oregon silverspot butterfly as an NEP in this area to address adjacent landowner concerns regarding the impact a federally listed species might have on the sale or development of their property. As little or no suitable habitat is currently available on adjacent properties, and Oregon silverspot butterflies are territorial and non-migratory, we consider the likelihood of butterflies moving on to these adjacent lands to be low. Despite a few adjacent properties that Oregon silverspot butterflies might occasionally move through, the primary surrounding land cover is agriculture and forest (USFWS 2013, p. 4–3), which are not suitable habitat for the subspecies; therefore, occurrence of Oregon silverspot butterflies in surrounding areas, if any, is expected to be limited.

Likelihood of Population Establishment and Survival

The best available scientific data indicate that the reintroduction of Oregon silverspot butterflies into suitable habitat is biologically feasible and would promote the conservation of the species. Oregon silverspot butterfly population augmentations have been conducted on the central Oregon coast from 2000 through 2015 (USFWS 2012, p. 10; Engelmeyer 2015, p. 4). Based on the knowledge gained from these efforts, we anticipate the proposed NEP areas would become successfully established. Butterflies would be released into high-quality habitat in sufficient amounts to support large butterfly populations, and no unaddressed threats to the species are known to exist at these sites.

The coastal headland meadows of the Nestucca Bay NWR are being restored with the specific intent of providing high densities of the plant species needed by the Oregon silverspot butterfly. Ongoing habitat enhancement and management will maintain suitable habitat and minimize the abundance and distribution of invasive, nonnative plant species, which degrade habitat quality. The Nestucca Bay NWR has committed to the management required to restore and maintain suitable habitat specifically for a population of the Oregon silverspot butterfly. The upper meadows of the Saddle Mountain SNA have an abundance of the key resources, including an intact plant community with an abundance of plants needed to support the Oregon silverspot butterfly. Habitat quality has been maintained through natural processes, including vertical drainage patterns associated with steep ridges, thin rocky soils, elevation, and winter snow cover within the forb rich Roemer fescue montane grassland community (ONHIC 2004, p. 2). The habitat at Saddle Mountain is self-sustaining, does not require active management (see **Addressing Causes of Extirpation**, below), and is adequately protected. Additionally, within both proposed NEP areas, large trees surrounding the meadows would provide needed cover for sheltering Oregon silverspot butterflies.

Based on all of these considerations, we anticipate that reintroduced Oregon silverspot butterflies are likely to become established and persist at Nestucca Bay NWR and Saddle Mountain SNA.

Addressing Causes of Extirpation

The largest threat to Oregon silverspot butterfly populations is a lack of suitable habitat. Without regular disturbance, coastal prairie habitat is vulnerable to plant

community succession, resulting in loss of prairie habitat to brush and tree invasion.

Invasive, nonnative plants also play a significant role in the degradation of habitat quality and quantity for this butterfly.

The reasons for the extirpation of the original population of Oregon silverspot butterflies on Saddle Mountain between 1973 and 1980 are unknown. The habitat on top of Saddle Mountain is currently suitable for supporting a population of the butterfly. The grassland habitat at this location has been self-sustaining likely due to the 3,000-ft (914-m) elevation, thin rocky soil type, steep slopes, primarily native composition of the plant community, and lack of human disturbance to the ecosystem. The Saddle Mountain SNA, protected as a special botanical area, has an annual day-use rate of 68,928 visitors per year. OPRD maintains a trail, accessible only by foot, which leads to the top of the mountain. The extremely steep grade on either side of the trail discourages visitors from straying off trail and into the adjacent meadow areas. Park rules do not allow collection of plants or animals (OPRD 2010). Continuance of this management regime is expected to protect the reintroduced population and contribute to its successful establishment. We acknowledge there is some uncertainty regarding population establishment and long-term viability at this site given that we have not identified the original cause of local extirpation. Nevertheless, this site has been identified as one of the most promising for a reintroduction effort given the lack of identifiable threats, density of host plants, and overall quality of habitat (VanBuskirk 2010, p. 27).

The Nestucca Bay NWR will address habitat threats by monitoring and maintaining habitat quality for the benefit of the Oregon silverspot butterfly, in

accordance with the Nestucca Bay National Wildlife Refuge Comprehensive Conservation Plan, which sets specific targets for abundance of violet and nectar species. All management actions taken in the vicinity of the reintroduced population will defer to the habitat needs of the butterfly (USFWS 2013, pp. 4-37–4-43). As described above, the Nestucca Bay NWR is actively working to restore habitat specifically for the benefit of the Oregon silverspot butterfly in anticipation of a potential reintroduction. Restoration efforts have proven successful in establishing high-quality habitat that is likely to support all life stages of the subspecies. Nestucca Bay NWR's demonstrated commitment to reestablishing and maintaining high-quality habitat suitable for the Oregon silverspot butterfly is expected to contribute to the successful establishment of the proposed NEP at this site.

Release Procedures

We propose to use captive-reared butterflies to populate the NEP areas using proven release methods developed by the Oregon silverspot butterfly population augmentation program from 2000 to 2015 (USFWS 2012, p. 10; Engelmeyer 2015, p. 2). We will release captive-reared caterpillars or pupae of wild female butterflies into suitable habitat within the proposed NEP areas, following the guidance in the Captive Propagation and Reintroduction Plan for the Oregon Silverspot Butterfly (VanBuskirk 2010, entire). We will determine the number of individuals to release based on the number of available healthy offspring and the amount of suitable habitat available, with violet densities as the primary measure of habitat suitability. The ultimate goal is the establishment of self-sustaining populations of between 200 to 500 butterflies for 10

years at each proposed NEP area, similar to the recovery criteria for the other habitat conservation areas.

Based on guidance from the Captive Propagation and Reintroduction Plan for the Oregon Silverspot Butterfly (VanBuskirk 2010, entire), we propose to establish populations in each NEP area from offspring of at least 50 mated females. Because the number of female butterflies available for collection for the captive-rearing program is limited to 5 percent of the donor population per year, it may be necessary to release caterpillars or pupae incrementally over a period of a few years. We will use annual butterfly counts during the flight period to monitor population establishment success. Butterfly survey methods used at the occupied sites (Pollard 1977, p. 116; Pickering 1992, p. 3) will also be used to assess population establishment success in the proposed NEP areas.

Donor Stock Assessment and Effects on Donor Populations

Individual Oregon silverspot butterflies used to establish populations at both proposed NEP areas will most likely come from the offspring of the Mount Hebo population. Additional genetic research on the subspecies is in progress and may suggest that butterflies from other populations should be included in the captive-rearing program to enhance genetic diversity. If populations other than the Mount Hebo population are used as donor stock, we will evaluate the impact of taking females from those populations on the survival and recovery of the subspecies prior to issuing a recovery permit for such take.

The Mount Hebo Oregon silverspot butterfly population has historically been the

largest and most stable population, averaging an annual index count of 1,457 butterflies per year between 2000 to 2014 (USFWS 2012, p. 10; Patterson 2014, p. 11); therefore, it is the least likely to be impacted by the removal of up to 5 percent of the population. Demographic modeling indicates that the optimal strategy for captive rearing of Oregon silverspot butterflies to increase the probability of persistence is to take females from larger donor populations (Crone *et al.* 2007, p. 108). Regional persistence can be increased with captive rearing, with negligible effects on the donor population (Crone *et al.* 2007, pp. 107-108). Measurable increases in regional persistence are predicted when one assumes each donor female produces four adult butterflies for release to the wild (i.e., four adults/female). In reality, the number of adult butterflies produced per female captured from the donor population has been much higher in recent years. For example, during 2007–2009, between 24 and 29 females were captured, producing between 875 and 2,391 adults for release (31–83 adults/female) (VanBuskirk 2010, p. 12). In 2015, 14 females produced 815 adults for release (58 adults/female) (Engelmeyer 2015, p. 5). These rates of production far exceed what is needed to have a positive impact on regional persistence, even if all the females were removed from small donor populations (see Crone *et al.* 2007, p. 109). As an additional protective measure, we will release some caterpillars and pupae from the captive-rearing program back into the donor population each year, concurrent with the reintroductions to the proposed NEP areas. This will further minimize any potential effects from the removal of a small number of adult females in the prior year.

The Mount Hebo population occurs in an environment similar to the proposed

Saddle Mountain NEP area (i.e., similar elevation, native plant community, and distance from the coast). Therefore, offspring of butterflies from Mount Hebo will likely be well-adapted to the environment in the meadows on top of Saddle Mountain. The Mount Hebo population may also serve as the best donor population for the proposed Nestucca Bay NEP area because it is genetically most similar to the existing population closest to the refuge (i.e., the Cascade Head population) (VanBuskirk 2000, p. 27; McHugh *et al.* 2013, p. 8). We will consider all new scientific information when making annual decisions on an appropriate donor population; therefore, it is possible that we will use donor populations other than Mount Hebo.

The Captive Propagation and Reintroduction Plan for the Oregon Silverspot Butterfly (VanBuskirk 2010, entire) contains further information on the captive rearing program, release procedures, genetic considerations, population dynamics, effects of releases on population viability of the Oregon silverspot butterfly, and the potential for reintroduction to Saddle Mountain SNA and Nestucca Bay NWR (copies of this document are available online at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2016–0102 or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, above).

Legal Status of Reintroduced Populations

Based on the current legal and biological status of the subspecies and the need for management flexibility, and in accordance with section 10(j) of the Act, we propose to designate all Oregon silverspot butterflies released within the boundaries of the NEP areas as members of the NEP. Such designation allows us to establish special protective

regulations for management of Oregon silverspot butterflies.

With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Treating the experimental population as threatened allows us the discretion to devise management programs and specific regulations for such a population. Section 4(d) of the Act allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. When designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve that species.

The 10(j) rule would further the conservation of the subspecies by facilitating its reintroduction into two areas of suitable habitat within its historical range. The rule would provide assurances to landowners and development interests that the reintroduction of Oregon silverspot butterflies will not interfere with natural resource developments or with human activities (although the Act's section 7(a)(2) consultation requirements would still apply on Nestucca Bay NWR). Without such assurances, some landowners and developers, as well as the State, would object to the reintroduction of Oregon silverspot butterflies to these two areas. Except as provided for under sections 10(a)(1)(A) and 10(e) of the Act, or as described in this proposed NEP rule, take of any member of the Oregon silverspot butterfly NEP will be prohibited under the Act.

Extent to Which the Reintroduced Population May Be Affected by Land Management Within the Proposed NEP

We conclude that the effects of Federal, State, or private actions and activities will not pose a threat to Oregon silverspot butterfly establishment and persistence at Saddle Mountain SNA or the Nestucca Bay NWR because the best information, including activities currently occurring in Oregon silverspot butterfly populations range wide, indicates that activities currently occurring, or likely to occur, at prospective reintroduction sites within proposed NEP areas are compatible with the species' recovery. The reintroduced Oregon silverspot butterfly populations would be managed by OPRD and the Service, and would be protected from major development activities through the following mechanisms:

(1) Development activities and timber harvests are not expected to occur in the Saddle Mountain SNA, which is protected as a special botanical area. Trail maintenance and other park maintenance activities would continue to occur within the proposed NEP area, but are expected to have minimal impact on the butterfly meadow habitat areas due to the terrain and steepness of the slopes. Because of the rugged nature of the area, and also to protect the important botanical resources at this site, maintenance activities in this area are generally limited to trail maintenance by hand crews, with minimal impacts on the meadow areas. Additionally, the proposed Oregon silverspot butterfly NEP area at Saddle Mountain SNA would be protected by the Oregon State regulations prohibiting collection of animals on State lands (Oregon Administrative Rule (OAR) 736-010-0055(2)(d)). Private timberlands surrounding the SNA do not contain suitable butterfly habitat, and therefore activities on adjacent lands are not expected to impact the butterfly.

(2) In accordance with the Nestucca Bay NWR Comprehensive Conservation

Plan, all refuge management actions taken in the vicinity of the reintroduced population will defer to the habitat needs of the butterfly (USFWS 2013, pp. 4-37–4-43). In addition, the refuge must complete section 7(a)(2) consultation on all actions that may affect the butterfly. Oregon silverspot butterflies may occasionally visit or fly within adjacent properties near the proposed NEP area, which may be subject to future development. However, given the lack of suitable habitat for this subspecies on adjacent properties, as well as the butterfly's territorial and non-migratory nature, we consider negative impacts to the Oregon silverspot butterfly from development on adjacent sites to be unlikely, as there is little likelihood of individuals moving to these sites.

Management issues related to the proposed Oregon silverspot butterfly NEP that have been considered include:

(a) *Incidental Take*: The regulations implementing the Act define “incidental take” as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. Experimental population rules contain specific prohibitions and exceptions regarding the taking of individual animals. If we adopt this 10(j) rule as proposed, take of the Oregon silverspot butterfly anywhere within the NEP areas would not be prohibited, provided that the take is unintentional, not due to negligent conduct, and is in accordance with this 10(j) rule; however, the section 7(a)(2) consultation requirement still applies on refuge lands. We expect levels of incidental take to be low because the reintroduction is compatible with ongoing activities and anticipated future actions in the

proposed NEP areas.

(b) *Special handling:* In accordance with 50 CFR 17.32, any person with a valid permit issued by the Service may take the Oregon silverspot butterfly for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act. Additionally, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by the agency for such purposes, may, when acting in the course of official duties, take an Oregon silverspot butterfly in the wild in the NEP area without a permit if such action is necessary for scientific purposes, to aid a law enforcement investigation, to euthanize an injured individual, to dispose of or salvage a dead individual for scientific purposes, or to relocate an Oregon silverspot butterfly to avoid conflict with human activities, to improve Oregon silverspot butterfly survival and recovery prospects or for genetic purposes, to move individuals into captivity or from one population in the NEP to the other, or to retrieve an Oregon silverspot butterfly that has moved outside the NEP area. Non-Service or other non-authorized personnel would need a permit from the Service for these activities.

(c) *Coordination with landowners and land managers:* We have coordinated with landowners likely to be affected by the proposed reintroduction. During this coordination we identified issues and concerns associated with reintroducing Oregon silverspot butterflies in the absence of an NEP designation. We also discussed the possibility of NEP designation. Affected State agencies, landowners, and land managers have either

indicated support for, or no opposition to, the proposed NEP if a 10(j) rule is promulgated to allow incidental take of Oregon silverspot butterflies.

(d) *Public awareness and cooperation:* The proposed NEP designation is necessary to secure needed cooperation of the States, landowners, agencies, and other interests in the affected area. If this proposed rule is adopted, we will work with our partners to continue public outreach on our effort to restore Oregon silverspot butterflies to parts of their historical range and the importance of these restoration efforts to the overall recovery of the subspecies.

(e) *Potential impacts to other federally listed species:* No federally listed species occur in the proposed NEP areas that would be affected by the reintroductions.

(f) *Monitoring and evaluation:* Annual monitoring would be performed by qualified personnel with the cooperation of the OPRD Saddle Mountain SNA and Nestucca Bay NWR. Oregon silverspot butterflies would be counted on designated survey transects or public trails. We do not anticipate that surveys would disrupt or hamper public use and would likely be perceived by the public as normal activities in the context of a natural area.

Reintroduction Effectiveness Monitoring

Oregon silverspot butterfly surveys would be conducted annually within Oregon silverspot butterfly habitat at Nestucca Bay NWR and Saddle Mountain SNA using a modified Pollard walk methodology (Pickering *et al.* 1992, p. 7). This survey method is currently used at all occupied Oregon silverspot butterfly sites. The surveys would be conducted weekly during the butterfly flight period, July through September, on

designated survey transects or public trails. The surveys produce an index of Oregon silverspot butterfly relative abundance that would be used to assess annual population trends to provide information on reintroduction effectiveness. We would prepare annual progress reports. Reintroduction efforts would be fully evaluated after 5 years to determine whether to continue or terminate the reintroduction efforts.

Donor Population Monitoring

We would conduct annual Oregon silverspot butterfly surveys within the populations where donor stock is obtained using a modified Pollard walk methodology (Pickering *et al.* 1992, p. 7). Our annual monitoring would be used to adaptively manage the captive rearing program to insure that the removal of donor stock would not jeopardize the continued existence of the population or the species as a whole.

Monitoring Impacts to Other Listed Species

We do not anticipate impacts to other listed species by the proposed reintroduction of the Oregon silverspot butterfly.

Findings

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that reintroducing the Oregon silverspot butterfly into the Saddle Mountain SNA and the Nestucca Bay NWR and the associated protective measures and management practices under this proposed rulemaking would further the conservation of the subspecies. The nonessential experimental population status is appropriate for the reintroduction areas because we have determined that these populations are not essential to the continued existence of the

subspecies in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 60 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small

organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected if this proposed rule is adopted includes the release areas at Saddle Mountain SNA and Nestucca Bay NWR and adjacent areas into which individual Oregon silverspot butterflies may disperse. Because of the regulatory flexibility for Federal agency actions provided by the proposed NEP designation and the exemption for incidental take in the rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the proposed NEP. In regard to section 7(a)(2) of the Act, the population would be treated as proposed for listing, and Federal action agencies are not required to consult on their activities, except on National Wildlife Refuge and National Park land where the subspecies is managed as a threatened species. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the proposed NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for the Oregon silverspot butterfly populations within the NEP areas.

Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP areas. Within the boundaries of the Nestucca Bay NWR, the subspecies would be treated as a threatened species for the purposes of section 7(a)(2) of the Act. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within Nestucca Bay NWR may occur to benefit the Oregon silverspot butterfly, but we do not expect projects to be substantially modified because these lands are already being administered in a manner that is compatible with Oregon silverspot butterfly recovery.

If adopted, this proposal would broadly authorize incidental take of the Oregon silverspot butterfly within the NEP areas. The regulations implementing the Act define “incidental take” as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as, agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP areas that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be authorized. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the proposed NEP areas are timber production, agriculture, and activities associated with private residences. We believe the presence of the Oregon silverspot butterfly would not affect the use of lands

for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or private landowners due to the presence of the Oregon silverspot butterfly, and Federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas, except on Nestucca Bay NWR lands where section 7(a)(2) of the Act would apply. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the proposed NEP areas.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) If adopted, this proposal would not “significantly or uniquely” affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This proposed rule would not produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act). The proposed NEP area designations for the Oregon silverspot butterfly would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the take of reintroduced Oregon silverspot butterflies when such take is incidental to an otherwise legal activity, such as recreation (e.g., hiking, birdwatching), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that the proposed NEP would conflict with existing or proposed human activities.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Oregon. Achieving the recovery goals for this subspecies would

contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The proposed rule would maintain the existing relationship between the State and the Federal Government, and is being undertaken in coordination with the State of Oregon. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The reintroduction of native species into suitable habitat within their historical or

established range is categorically excluded from NEPA documentation requirements consistent with the Department of Interior's Department Manual (516 DM 8.5B(6)).

Government-to-Government Relationship with Tribes

In accordance with the presidential memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994), Executive Order 13175 (65 FR 67249; November 9, 2000), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no tribal lands affected by this proposed rule.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Rule (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this final rule is available at <http://www.regulations.gov> at Docket No. FWS–R1–ES–2016–0102 or upon request from the Newport Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Service's Newport Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise

noted.

2. Amend § 17.11(h) by revising the entry for “Butterfly, Oregon silverspot” under INSECTS in the List of Endangered and Threatened Wildlife to read as follows:

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *	* * *			
INSECTS				
* * * * *	* * *			
Butterfly, Oregon silverspot	<i>Speyeria zerene hippolyta</i>	Wherever found, except where listed as an experimental population.	T	45 FR 44935; 7/2/1980, 50 CFR 17.95(i) ^{CH} .
Butterfly, Oregon silverspot	<i>Speyeria zerene hippolyta</i>	U.S.A. (OR—specified portions of Clatsop and Tillamook Counties; see § 17.85(d)).	XN	[Federal Register citation of the final rule]
* * * * *	* * *			

3. Amend § 17.85 by adding paragraph (d) to read as follows:

§17.85 Special rules—invertebrates.

* * * * *

(d) Oregon Silverspot Butterfly (*Speyeria zerene hippolyta*).

(1) *Where is the Oregon silverspot butterfly designated as a nonessential experimental population (NEP)?* (i) The NEP areas for the Oregon silverspot butterfly are within the subspecies' historical range in Tillamook and Clatsop Counties, Oregon. The boundary of the NEP includes those Public Land Survey System sections intersecting with a 4.25-mile (6.8-kilometer) radius around the release locations. This boundary was selected to encompass all likely movements of Oregon silverspot butterflies away from the release areas while maintaining geographic separation from existing populations.

(A) The Nestucca Bay NEP area, centered on the coastal prairie habitat on the Cannery Hill Unit of the Nestucca Bay National Wildlife Refuge (Nestucca Bay NEP area), includes Township 4 South, Range 10 West, Sections 15 through 36; Township 4 South, Range 11 West, Sections 13, 24, 25, and 36; Township 5 South, Range 10 West, Sections 2 through 11, 14 through 23, 27 through 30; and Township 5 South, Range 11 West, Sections 12, 13, 24, and 25.

(B) The Saddle Mountain NEP area, centered on the coastal prairie habitat on top of Saddle Mountain State Natural Area (Saddle Mountain NEP area), includes Township 6 North, Range 7 West, Sections 7, 17 through 20, 29 through 32; Township 6 North, Range 8 West, Sections 1 through 36; Township 6 North, Range 9 West, Sections 1, 11 through 14, 23 through 26, 35, and 36; Township 5 North, Range 7 West, Sections 5 through 8, 17, 18, and 19; Township 5 North, Range 8 West, Sections 1 through 24; and Township 5 North, Range 9 West, Sections 1, 2, 3, 11, 12, 13, and 14.

(ii) The nearest known extant population to the Nestucca Bay NEP area is 8 miles (13 kilometers) to the south, beyond the longest known flight distance of the butterfly (4.1 miles (6.6 kilometers)) and with little or no suitable habitat between them. The nearest known extant population to the Saddle Mountain NEP area is 50 miles (80 kilometers) to the south, well beyond the longest known flight distance of the butterfly (4.1 miles (6.6 kilometers)). Given its habitat requirements, movement patterns, and distance from extant populations, the NEP is wholly separate from extant populations and we do not expect the reintroduced Oregon silverspot butterflies to become established outside the NEP areas. Oregon silverspot butterflies outside of the NEP boundaries will assume the status of Oregon silverspot butterflies within the geographic area in which they are found.

(iii) We will not change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP areas without engaging in notice-and-comment rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What take of the Oregon silverspot butterfly is allowed in the NEP areas?

(i) Oregon silverspot butterflies may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, and is incidental to carrying out an otherwise lawful activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations.

(ii) Any person with a valid permit issued by the Service under 50 CFR 17.32

may take the Oregon silverspot butterfly for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act. Additionally, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by the agency for such purposes, may, when acting in the course of official duties, may take an Oregon silverspot butterfly in the wild in the NEP area if such action is necessary:

- (A) For scientific purposes;
- (B) To relocate Oregon silverspot butterflies to avoid conflict with human activities;
- (C) To relocate Oregon silverspot butterflies within the NEP area to improve Oregon silverspot butterfly survival and recovery prospects or for genetic purposes;
- (D) To relocate Oregon silverspot butterflies from one population in the NEP into another in the NEP, or into captivity;
- (E) To euthanize an injured Oregon silverspot butterfly;
- (F) To dispose of a dead Oregon silverspot butterfly, or salvage a dead Oregon silverspot butterfly for scientific purposes;
- (G) To relocate an Oregon silverspot butterfly that has moved outside the NEP area back into the NEP area; or
- (H) To aid in law enforcement investigations involving the Oregon silverspot butterfly.

(3) *What take of Oregon silverspot butterfly is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (d)(2) of this section, all of the provisions of 50 CFR 17.31(a) and (b) apply to the Oregon silverspot butterfly in areas identified in paragraph (d)(1) of this section.

(ii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means, Oregon silverspot butterflies, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (d)(2) of this section or in violation of applicable State fish and wildlife laws or regulations or the Act.

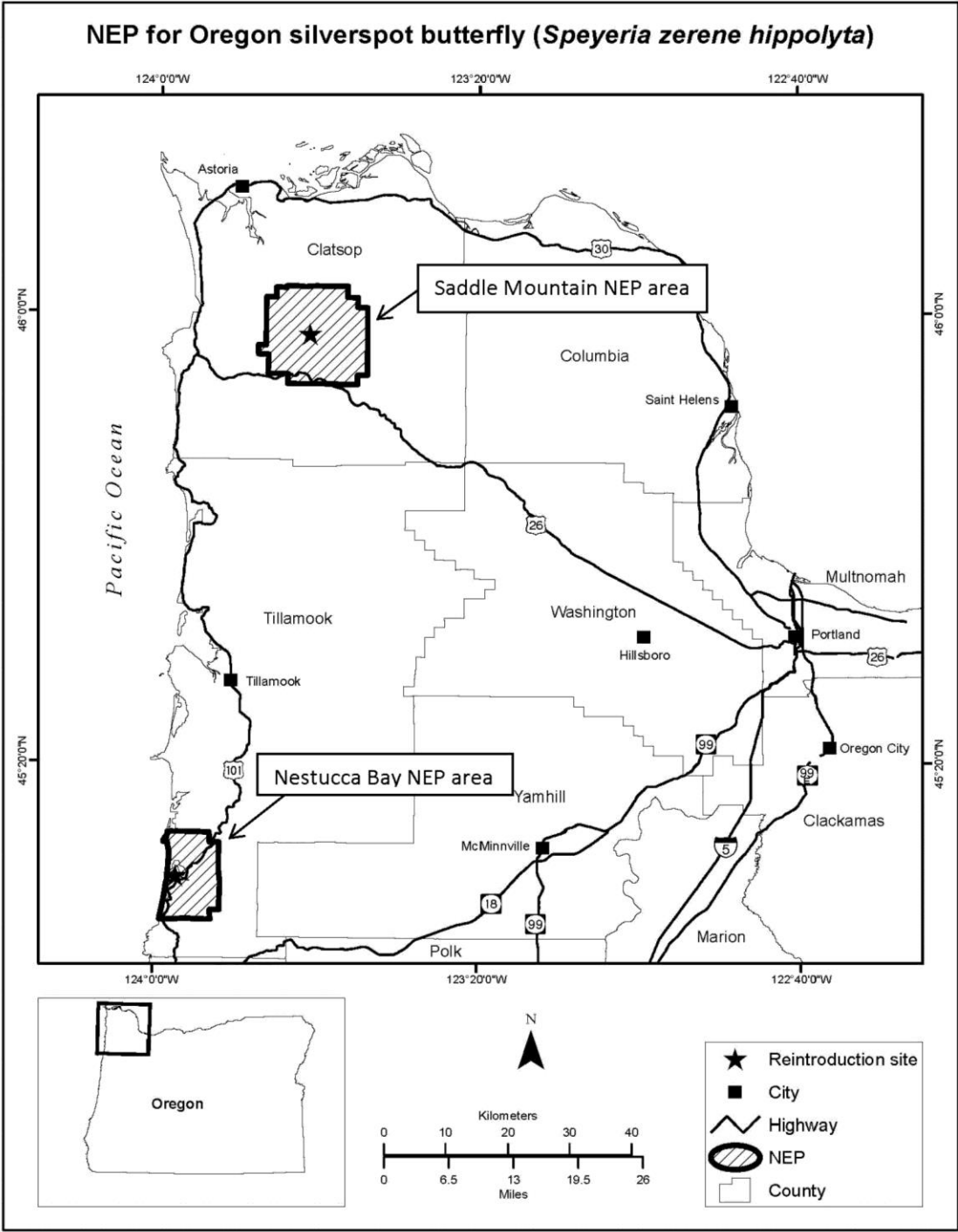
(iii) Any manner of take not described under paragraph (d)(2) of this section is prohibited in the NEP areas.

(iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any take of the Oregon silverspot butterfly, except as expressly allowed in paragraph (d)(2) of this section.

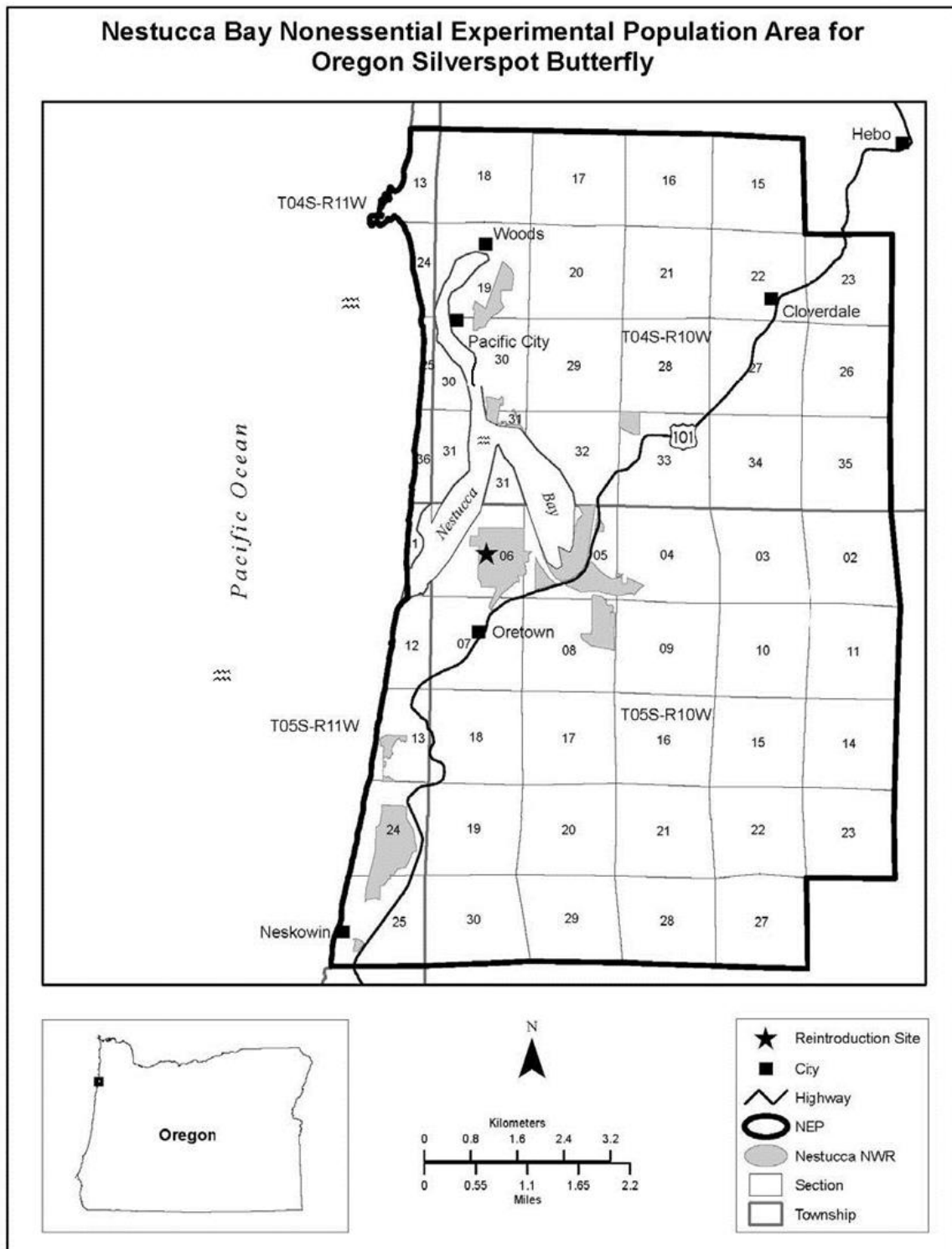
(4) *How will the effectiveness of these reintroductions be monitored?* We will monitor populations annually for trends in abundance in cooperation with partners and prepare annual progress reports. We will fully evaluate reintroduction efforts after 5 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Maps of the NEP areas for the Oregon silverspot butterfly in Northwest Oregon.*

(i) Note: Map of the Oregon silverspot butterfly NEP follows:

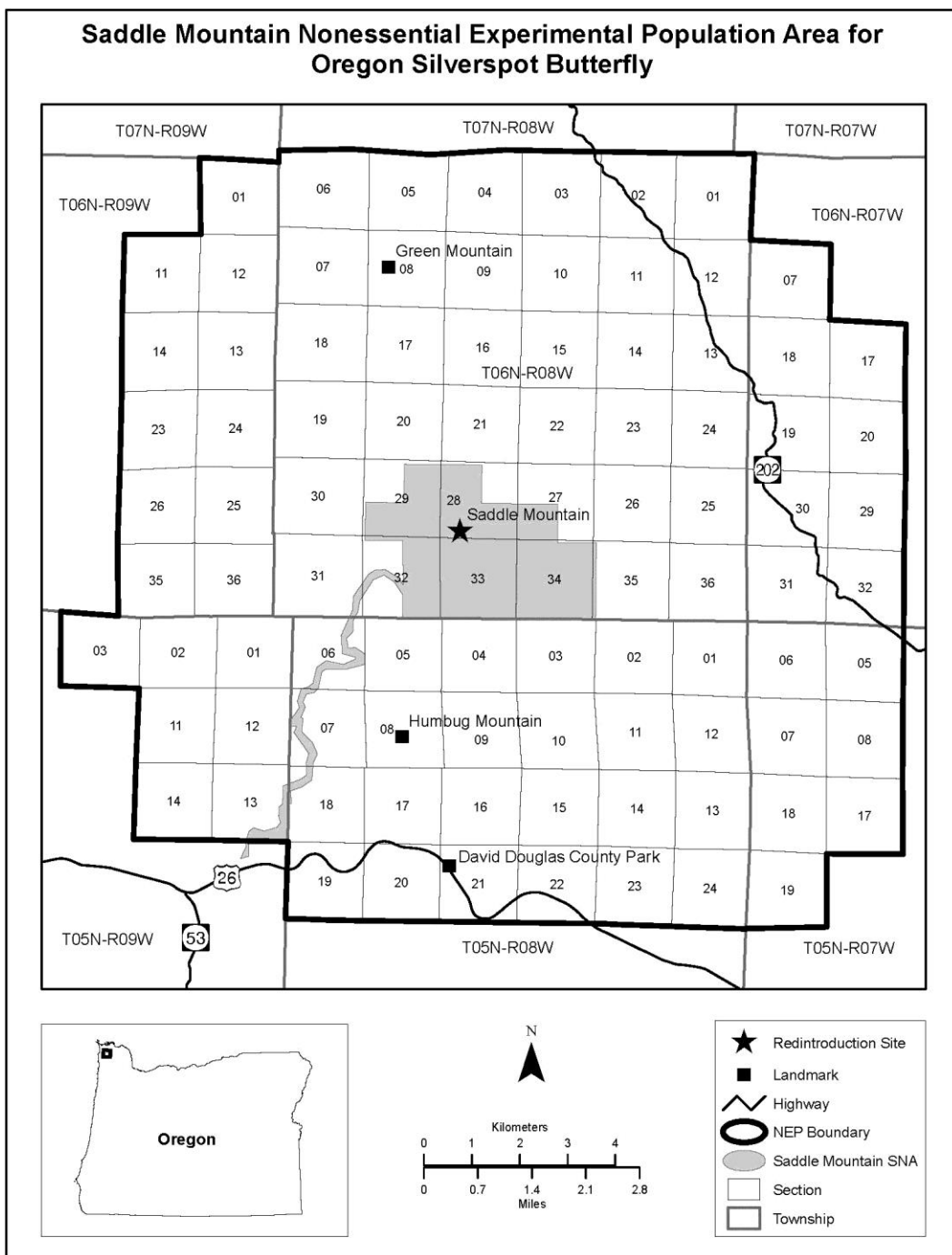


(ii) *Note:* Map of Nestucca Bay NEP area for the Oregon silverspot butterfly follows:



(iii) *Note:* Map of Saddle Mountain NEP area for the Oregon silverspot butterfly

follows:



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Dated: December 19, 2016

Signed:

Michael J. Bean

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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